



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

mn

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,858	04/09/2004	Hideomi Idei	501.43751X00	8697

24956 7590 03/20/2007
MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA, VA 22314

EXAMINER

BONZO, BRYCE P

ART UNIT PAPER NUMBER

2113

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/820,858

Applicant(s)

IDEI ET AL.

Examiner

Bryce P. Bonzo

Art Unit

2113

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6 and 11 is/are allowed.
- 6) ☒ Claim(s) 1-4,7 and 8 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

NON-FINAL REJECTION

Status of the Claims

Claims 1-4, 7 and 8 are rejected under 35 USC §102.

Claims 6 and 11 are allowed.

Claim 5 is objected to while containing allowable subject matter.

Rejections under 35 USC §102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 7 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Timpanaro-Perrotta (United States Patent Application Publication 2003/0177324 A1).

As per claim 1, Timpanaro-Perrotta discloses:

a first storage apparatus located a first site (¶21);

a second storage apparatus located a second site operatively connected to the first site via a network (¶21);

wherein the first storage apparatus is configured to sort data stored in the first storage apparatus into groups which are assigned a priority level and to transfer the sorted data to the second storage apparatus according to the priority (§25),

wherein, when a failure occurs in the first storage apparatus, the second storage apparatus transfers the sorted data stored therein, in an order according to the priority levels assigned to the groups, to the first storage apparatus to recover the first storage apparatus (§24), and

wherein the sorted data having a highest priority level is transferred from the second storage apparatus to the first storage apparatus (§24).

As per claim 2, Timpanaro-Perrotta discloses:

wherein the first storage apparatus sorts the data into groups based on recovery time required for recovering data (§24).

As per claim 3, Timpanaro-Perrotta discloses:

wherein the first storage apparatus transfers the sorted data to the second storage apparatus in an asynchronous remote copy manner (§11 and §34, as more than one piece of data is being prepared for transfer to the back up, this system can not be running in a synchronous manner and must be running in an asynchronous manner).

As per claim 4, Timpanaro-Perrotta discloses:

wherein the sorted data s used in a database (column 3, lines 39-62).

As per claim 7, Timpanaro-Perrotta discloses:

wherein the second site detects the failure of the first storage apparatus via the network (¶28).

As per claim 8, Timpanaro-Perrotta discloses:

wherein the second storage apparatus restricts use of at least one of the groups in which data to be recovered is included, and allows use of at least one of the groups when the data in the at least one of the groups is recovered (¶24, the lowest priority data is restored last therefore it is in fact inaccessible to the user).

Allowable Subject Matter

Claims 6 and 11 are allowed.

Claim 5 is objected to while containing allowable subject matter. Claim 5 depends from rejected claims 1 and 4. Claim 6 was indicated allowable in the prior office action, however Applicant ignored the Examiner's caution that all limitations of the intervening claimed need to be incorporated for allowance. Claim 5 now, contain all the subject matter of the previous claim 6, and is allowed for the same reasons.

Response to Applicant's Arguments

Art Unit: 2113

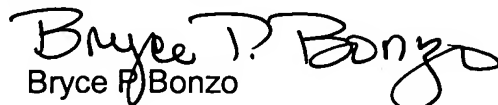
Applicant's arguments with respect to claims 1-4, 7 and 8 have been considered but are moot in view of the new ground(s) of rejection., necessitated by amending in a manner contrary to the Examiner's prior comments..

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryce P. Bonzo whose telephone number is (571)272-3655. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571)272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Bryce P. Bonzo

Application/Control Number: 10/820,858
Art Unit: 2113

Page 6

Primary Examiner
Art Unit 2113